

Application No. 10/532,943  
Amendment dated January 27, 2009  
Reply to Office Action of November 25, 2008

Docket No.: 27656/40689

**AMENDMENTS TO THE DRAWINGS**

The attached sheet(s) of drawings includes changes to Figure 7.

Attachment:      Replacement sheet

## **REMARKS**

### **I. PRELIMINARY REMARKS**

The applicant appreciates the examiner's acknowledgment that claims 2, 9, 14, and 21 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, first and second paragraphs.

The Specification is amended to correct typographical errors. The specification is further amended at p. 3 to reference Figure 7 and to reference the rims disposed on the spout and the cap with reference numbers 16 and 18.

A drawing sheet containing changes to Figure 7 is submitted herewith. Figure 7 is amended to label the rims on the spout and the cap that form the snap on means with reference numbers.

Claims 2, 6, 9, 16, and 21 are amended to recite "the wrench or socket."

### **II. OUTSTANDING REJECTIONS**

The drawing Figure 7 is objected as presenting new matter.

The specification is objected to for referencing the cap using reference numbers 2 and 3 on page 4.

Claims 1-22 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement on the basis that there is no disclosure for a closure comprising a spout and a removable cap.

Claims 1-22 also stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for setting forth the structure of the container as the structure of the closure.

Claims 2, 6, 9, 16, and 21 also stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to provide antecedent basis for "the socket."

Claim 21 also stands rejected under 35 U.S.C. § 112, second paragraph as failing to provide antecedent basis for "the circular recess."

Claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Deussen, U.S. Patent No. 4,134,511.

Claims 3 and 7 stand rejected under 35 U.S.C. § 103(a) as being obvious over Deussen.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being obvious over Deussen in view of Bayer, U.S. Patent No. 4,688,703.

### **III. PATENTABILITY ARGUMENTS**

#### **A. The Objection to Figure 7 Should be Withdrawn in Light of the Amendment to the Drawing.**

The objection to Figure 7 as presenting new matter should be withdrawn. Figure 7 is amended for clarity to include reference numbers pointing to the rims on the outside of the spout and the inside of the cap, which form the snap on means for retaining the cap on the spout. Support for the snap elements as shown in Figure 7 can be found in the specification, for example, at p. 3, lines 7-10, which states that the cap can be held on the spout “by snap on means, i.e. rims and/or noses on the outside of the container 1 or spout 10 and/or the inside of the cap 2.” The specification at p. 3, lines 7-10, is also amended to include the references numbers for the rims and/or noses shown in Figure 7.

#### **B. The Rejections of Claims 1-22 Under 35 U.S.C. § 112, First Paragraph Should Be Withdrawn.**

The rejection of claims 1-22 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement should be withdrawn. The specification provides adequate support for a closure comprising a spout and a removable cap, for example, at p. 2, line 33, to p. 3, line 2, which discloses that the closure, in the closed state includes a twist away element on the dispensing nozzle or spout and that the closure also includes a removable cap, and p. 6, lines 22-25, which discloses that the “closure comprises a spout 10 and a cap 2.” Accordingly, in view of these disclosures, the specification provides written descriptive support for claims 1-22.

C. The Rejections of Claims 1-11 Under 35 U.S.C. § 112, Second Paragraph  
Should Be Withdrawn.

The rejection of claims 1-22 under 35 U.S.C. § 112, second paragraph as indefinite should be withdrawn. As shown above, the specification discloses a closure comprising a spout 10 and a removable cap 2. *See* specification, p. 2, lines 33 to p. 3 line 2; and p. 6, lines 22-25. In view of this disclosure, the claims setting forth the structure of the closure are definite.

The rejection of claims 2, 6, 9, 16, and 21 under 35 U.S.C. § 112, second paragraph as indefinite should be withdrawn in light of the amendments to the claims. Claims 2, 6, 9, 16, and 21 are each amended to recite “the wrench or socket” rather than “the socket.” Proper antecedent basis for the “the wrench or socket” is provided in independent claim 1. Claim 21 is further amended to be dependent upon claim 9, rather than claim 16, to provide antecedent basis for “the circular recess.”

D. The Rejections of Claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 Under 35 U.S.C. § 102(b) over Deussen Should Be Withdrawn.

The rejections of claims 1, 4-6, 8, 10-12, 15, 16, 19, 20, and 22 under 35 U.S.C. § 102(b) over Deussen should be withdrawn because Deussen fails to disclose a centering-aid that includes a second guiding surface on the inner surface of the cap that inwardly extends into the cap such that the wrench or socket is an inward continuation of the second guiding surface, as recited in independent claim 1. The centering-aid, which the examiner suggests is inherently formed on the outer surface of the spout and the inner surface of the cap as defined by the co-acting shapes, does not include a second guiding surface on an inner surface of the cap that extends inwardly into the cap such that the wrench or socket is an inward continuation of the second guiding surface. Rather, cap bottom 23, from which the socket is an inward continuation, does not provide a guiding surface, as the cap bottom 23 remains spaced apart from the neck 12 by an axial clearance 19. *See* Deussen, col. 3, lines 25-26; and Fig. 1. Accordingly, Deussen fails to disclose a second guiding surface on an inner surface of the cap that inwardly extends into the cap such that the wrench or socket is an inward continuation of the second guiding surface. Therefore, Deussen cannot anticipate independent claim 1 or any claims depending therefrom.

Moreover, there is no motivation to modify the cap 18 of Deussen to provide for a second guiding surface that inwardly extends into the cap such that the wrench or socket is an inward continuation of the second guiding surface because such modification would require one to destroy or disregard the expressly taught axial clearance 19 between the cap bottom 23 and the neck 12. Accordingly, a *prima facie* case of obviousness cannot be based on Deussen.

**E. The Rejection of Claims 3 and 7 Under 35 U.S.C. § 103(a) in view of Deussen Alone Should be Withdrawn.**

As shown above, Deussen fails to disclose or suggest each and every limitation of independent claim 1. Claims 3 and 7 depend from independent claim 1. Accordingly, Deussen fails to disclose or suggest each and every limitation of claims 3 and 7. Therefore, Deussen cannot render obvious claims 3 and 7.

**F. The Rejection of Claims 17 and 18 Under 35 U.S.C. § 103(a) in view of Deussen and Bayer Should be Withdrawn.**

As shown above, Deussen fails to disclose or suggest each and every limitation of independent claim 1. Specifically, Deussen fails to disclose or suggest a centering-aid having a second guiding surface on an inner surface of the cap that inwardly extends into the cap such that the wrench or socket is an inward continuation of the second guiding surface. Bayer does not cure the defect of Deussen. Rather, Bayer discloses a cap 7 that includes an annular gap 11 between the socket 9 and the outer wall of the cap 7. *See* Bayer, col. 2, lines 45-46. As clearly shown in Figure 1, the socket 9 of Bayer is not an inward continuation of the annular gap 11. Accordingly, Deussen, Bayer, or any combination thereof fail to disclose or suggest each and every limitation of independent claim 1. Claims 17 and 18 dependent from independent claim 1, and therefore, Deussen, Bayer, or any combination thereof also do not disclose or suggest each and every limitation of claims 17 and 18. Consequently, Deussen and Bayer cannot render obvious claims 17 and 18.

**CONCLUSION**

For the foregoing reasons, it is submitted that each of claims 1-22 should now be allowed. Should the Examiner wish to discuss any issues of form or substance, she is invited to contact the undersigned attorney at the number below.

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Respectfully submitted,

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